

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY HANNI, individually and on
behalf of all others similarly
situated, and CHASE L. COSTELLO,

Plaintiffs,

v.

AMERICAN AIRLINES, INC., and DOES 1
through 20, inclusive,

Defendants.

No. C 08-00732 CW

ORDER GRANTING
PLAINTIFFS' MOTION
FOR RECONSIDERATION
OF DISMISSAL OF FALSE
IMPRISONMENT CLAIM;
DENYING MOTION
FOR LEAVE TO FILE
PROPOSED FOURTH
AMENDED COMPLAINT;
AND DENYING MOTION
FOR CLASS
CERTIFICATION

Before the Court are Plaintiffs' motions for
(1) reconsideration of the July 11, 2008 Order dismissing the false
imprisonment cause of action, (2) leave to file a proposed fourth
amended complaint and (3) class certification of a false
imprisonment claim. Defendant opposes the motions.¹ The matter
was taken under submission on the papers. Having considered all of
the papers filed by the parties, the Court grants Plaintiffs'

¹The Court denies Defendant's administrative motion to file a
supplemental memorandum regarding the statute of limitations issue.
Although the Court appreciates Defendant's acknowledgment of its
citation error, there is no need to reargue issues already
addressed in its opposition.

1 motion for reconsideration, denies Plaintiffs' motion for leave to
2 file their proposed fourth amended complaint and denies Plaintiffs'
3 motion for class certification.

4 BACKGROUND

5 The parties are familiar with the facts of this case, which
6 have been addressed previously; the Court will only focus on the
7 facts relevant to this motion.

8 Kathleen Hanni was the only named plaintiff in the first
9 complaint filed in this case. Defendant moved pursuant to Federal
10 Rules of Civil Procedure 9(b) and 12(b)(6) to dismiss it. The
11 Court granted the motion in part and denied it in part, giving Ms.
12 Hanni leave to file an amended complaint. April 25, 2008 Order.
13 On May 15, 2008, Ms. Hanni filed her first amended complaint (1AC).
14 She alleged claims for false imprisonment, negligence, breach of
15 contract, fraud, conversion, civil conspiracy and a claim pursuant
16 to the Racketeer Influenced and Corrupt Organizations Act (RICO),
17 18 U.S.C. § 1961. Defendant again moved pursuant to Federal Rule
18 of Civil Procedure 12(b)(6) to dismiss the 1AC.

19 On July 11, 2008, the Court issued an order granting the
20 motion in part and denying it in part. The Court dismissed with
21 prejudice Ms. Hanni's claims for false imprisonment, intentional
22 infliction of emotional distress and fraud and dismissed in part
23 her claim for breach of contract. The Court dismissed without
24 prejudice Ms. Hanni's claims for civil conspiracy and RICO. July
25 11, 2008 Order at 6, 16, 19-20. The Court gave Ms. Hanni leave to
26 file a second amended complaint that could include: (1) a limited
27 negligence claim; (2) a limited breach of contract claim; (3) a
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1 conversion claim; and (4) a claim for civil conspiracy. July 11,
2 2008 Order at 20.

3 On July 31, 2008, Ms. Hanni filed her second amended complaint
4 (2AC). On August 12, 2008, the parties stipulated that Ms. Hanni
5 would file a third amended complaint (3AC) that included Ms.
6 Hanni's husband, Timothy Hanni, and sons, Chase Costello and Landen
7 Hanni, as named plaintiffs and that modified the allegations of the
8 complaint. Stipulation to File an Amended Complaint, August 12,
9 2008. On August 13, 2008, Plaintiffs filed their 3AC alleging
10 claims for negligence, breach of contract, conversion and civil
11 conspiracy. 3AC, August 13, 2008 ¶ 87-109. The Court dismissed
12 the civil conspiracy cause of action and allowed Plaintiffs to
13 pursue the negligence, breach of contract and conversion causes of
14 action. November 21, 2008 Order at 17.

15 On July 10, 2009, in response to discovery orders issued by a
16 Magistrate Judge compelling the production of Ms. Hanni's medical
17 records, Kathleen and Landen Hanni moved voluntarily to dismiss
18 their claims. The Court granted their motion on July 20, 2009.
19 Thus, Timothy Hanni and Chase Costello remain as named Plaintiffs
20 in this case.²

21 On January 15, 2010, the Court denied Plaintiffs' motion for
22 class certification, granted Defendant's motion for summary
23 judgment on the remaining causes of action and denied Colleen
24 O'Conner's motion for intervention. In the same order, the Court
25 granted Plaintiffs' motion for leave to file a motion for

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27 ²Hereinafter, Timothy Hanni and Chase Costello will be
28 referred to as Plaintiffs unless otherwise specified.

1 reconsideration regarding the July 11, 2008 Order dismissing the
2 false imprisonment cause of action. As instructed by the Court,
3 Plaintiffs combined that motion with a motion for leave to file a
4 fourth amended complaint and a motion to certify a false
5 imprisonment class.

6 DISCUSSION

7 I. Motion for Reconsideration

8 Defendant argues that Plaintiffs have no standing to bring a
9 motion for reconsideration because of the unique procedural history
10 of this case. When the Court dismissed the false imprisonment
11 cause of action with prejudice on July 11, 2008, Kathleen Hanni was
12 the only named Plaintiff in the case. Ms. Hanni's third amended
13 complaint, filed August 13, 2008, included her husband, Timothy
14 Hanni, and sons, Chase Costello and Landen Hanni as plaintiffs.
15 Almost one year later, on July 20, 2009, the Court granted Kathleen
16 and Landen Hanni's motion to dismiss their claims voluntarily.
17 Thus, since that date, Timothy Hanni and Chase Costello have been
18 the only named Plaintiffs in the case.

19 Defendant argues that, because Timothy Hanni and Chase
20 Costello were not named plaintiffs when the Court dismissed the
21 false imprisonment claim, they cannot bring the instant motion for
22 reconsideration. Defendant asserts that, instead, the present
23 motion is Timothy Hanni and Chase Costello's first attempt at
24 asserting a false imprisonment claim, and it should be treated
25 solely as a motion for leave to file a fourth amended complaint.
26 The Court disagrees.

27 Although the false imprisonment claim asserted in the original
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1 and first amended complaints specifically pertained to Kathleen
2 Hanni's experiences on December 29, 2006, she sought to represent a
3 class of similarly situated passengers, in which Timothy Hanni and
4 Chase Costello would be included. Moreover, when dismissing the
5 false imprisonment claim, the Court relied on arguments made by
6 Defendant that applied to the entire class, and it now appears that
7 those arguments may not be well-taken. Therefore, the Court grants
8 Plaintiffs' motion for reconsideration.

9 II. Motion for Leave to File Proposed Amended Complaint

10 A. Legal Standard

11 The parties dispute the legal standard under which the Court
12 should consider Plaintiffs' motion for leave to file a fourth
13 amended complaint. Defendant argues that Federal Rule of Civil
14 Procedure 16(b)(4) provides the proper standard and Plaintiffs
15 argue that Rule 15(a)(2) is the proper standard. Under Rule
16 16(b)(4), a party may modify a scheduling order "only for good
17 cause and with the judge's consent." Under Rule 15(a)(2), a party
18 may amend its pleading with the court's leave, which should be
19 "freely give[n] when justice so requires." These differing
20 standards pertain to two different types of motions. Here,
21 Plaintiffs are not attempting directly to modify the case
22 management scheduling order. Rather, they seek to add a claim to
23 their complaint. Accordingly, Rule 15(a)(2) applies.

24 Under this standard, four factors are relevant to whether a
25 motion for leave to amend should be denied: undue delay, bad faith
26 or dilatory motive, futility of amendment, and prejudice to the
27 opposing party. Foman v. Davis, 371 U.S. 178, 182 (1962). The
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1 Ninth Circuit holds that these factors are not of equal weight;
2 specifically, delay alone is insufficient ground for denying leave
3 to amend. United States v. Webb, 655 F.2d 977, 980 (9th Cir.
4 1981). Further, the "liberality in granting leave to amend is not
5 dependent on whether the amendment will add causes of action or
6 parties." DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th
7 Cir. 1987). Rather, the court should consider whether the proposed
8 amendment would cause the opposing party undue prejudice, is sought
9 in bad faith, or constitutes an exercise in futility. Id. (citing
10 Acri v. Int'l Ass'n of Machinists & Aerospace Workers, 781 F.2d
11 1393, 1398-99 (9th Cir. 1986)).

12 B. Timeliness and Futility of False Imprisonment Claim

13 Defendant argues that Plaintiffs' efforts to re-allege their
14 false imprisonment claim in light of "newly discovered" evidence is
15 barred by the statute of limitations and thus untimely and futile.

16 Under American Pipe and Construction Co. v. Utah, 414 U.S. 538
17 (1974), and Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983),
18 the filing of a class action complaint tolls the running of the
19 applicable statute of limitations for all proposed members of the
20 putative class as to all asserted claims. The tolling period ends,
21 and the statute runs again, once class certification is granted or
22 denied. Tosti v. City of Los Angeles, 754 F.2d 1485, 1488 (9th
23 Cir.1985).

24 Defendant does not dispute that the original complaint was
25 timely filed within the one-year statute of limitations for false
26 imprisonment or that the claim was asserted on behalf of the named
27 Plaintiff at the time, Kathleen Hanni, and unnamed class members.

1 Plaintiffs' alleged injury occurred on December 29, 2006 and
2 Kathleen Hanni filed her complaint on December 28, 2007, one day
3 before the statute of limitations would have expired. Although the
4 Court dismissed the false imprisonment cause of action on July 11,
5 2008, the statute of limitations clock did not begin to run again
6 on that date. Defendant has not provided any authority for the
7 proposition that the Court's July 11, 2008 dismissal of the false
8 imprisonment cause of action is considered a denial of class
9 certification for purposes of ending the American Pipe tolling
10 period.

11 Moreover, even if American Pipe tolling did not apply,
12 Plaintiffs' proposed amendment to the complaint relates back to the
13 original filing for statute of limitations purposes because it
14 arises out of the same conduct set out in the original pleading.
15 Fed. R. Civ. P. 15(c); Martell v. Trilogy, Ltd., 872 F.2d 322, 325
16 (9th Cir. 1989).

17 Further, the equities weigh against disallowing Plaintiffs'
18 false imprisonment claim based on a violation of the statute of
19 limitations. As discussed below, Defendant's argument that it had
20 the legal authority to keep Plaintiffs on the aircraft for the
21 length of time it did may not be correct legally or factually.
22 Therefore, Plaintiffs' false imprisonment claim is not time barred
23 and is not futile.

24 C. Prejudice and Bad Faith

25 Defendant asserts that it will suffer prejudice if the Court
26 grants Plaintiffs leave to amend their complaint. The first
27 complaint in this case was filed over two years ago and Defendant
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1 seeks to litigate this case as quickly as possible. Because there
2 was no claim for false imprisonment when the parties undertook
3 discovery in this case, discovery will have to be reopened if the
4 Court grants Plaintiffs' motion to amend. Although conducting
5 further discovery in this case will delay the case, "delay alone,
6 no matter how lengthy, is an insufficient ground for denial of
7 leave to amend." United States v. Webb, 655 F.2d 977, 980 (9th
8 Cir. 1981); see also Howey v. United States, 481 F.2d 1187, 1191
9 (9th Cir. 1973). "The purpose of the litigation process is to
10 vindicate meritorious claims. Refusing, solely because of delay,
11 to permit an amendment to a pleading in order to state a
12 potentially valid claim would hinder this purpose while not
13 promoting any other sound judicial policy." Howey, 481
14 F.2d at 1191. Moreover, Defendant has not submitted any evidence
15 to suggest that Plaintiffs have brought their motion to amend in
16 bad faith or with a dilatory motive.

17 D. Sufficiency of False Imprisonment Allegations

18 Defendant also argues that Plaintiffs' proposed false
19 imprisonment claim is insufficiently plead. False imprisonment
20 consists of "the nonconsensual, intentional confinement of a
21 person, without lawful privilege." Fermino v. Fedco, Inc., 7 Cal.
22 4th 701, 715 (1994). Defendant argues that Plaintiffs' new
23 complaint does not contain allegations that satisfy the "without
24 lawful privilege" element of their false imprisonment claim.³ In

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26 ³Defendant also argues that the false imprisonment claim is
27 preempted by federal law, citing 49 U.S.C. § 41713(b) and Air
28 Transport Ass'n v. Cuomo, 520 F.3d 218, 223 (2d Cir. 2008).
However, the Court previously determined that this claim is not

1 the July 11, 2008 Order dismissing this cause of action with
2 prejudice, Defendant cited, and the Court relied on, Federal
3 Aviation Regulations that give pilots broad authority over
4 passengers and the operation of an aircraft. See 14 C.F.R.
5 § 91.3(a) ("The pilot in command of an aircraft is directly
6 responsible for, and is the final authority as to, the operation of
7 that aircraft"); id. § 121.533(d) ("Each pilot in command of an
8 aircraft is, during flight time, in command of the aircraft and
9 crew and is responsible for the safety of the passengers,
10 crewmembers, cargo, and airplane"). Defendant argued that these
11 regulations provided a lawful privilege for the pilot to detain the
12 passengers. The Court concluded that a decision by the pilot to
13 keep passengers on an aircraft for their safety for an extended
14 period of time was lawful.

15 However, Plaintiffs have presented evidence that suggests that
16 the pilot of their aircraft did not order the detention of the
17 passengers, but rather wanted to allow the passengers to disembark.
18 There is evidence that the pilot was denied permission to do so by
19 Defendant's corporate managers and airport ground personnel. The
20 regulations Defendant relied upon do not provide that such
21 officials are authorized to hold passengers against their will.
22 Plaintiffs' evidence suggests that they were confined on the
23 aircraft without good reason, not, as Defendant contends, for their
24 safety and convenience. Thus, Defendant's prior grounds for
25 dismissal of the false imprisonment claim based on a pilot's legal
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27 preempted by federal law. See Docket No. 55 at 6-15.

1 authority to detain Plaintiffs on the aircraft for over nine hours
2 for safety reasons may be factually and legally incorrect.
3 Although other federal laws and regulations may grant Defendant's
4 corporate managers, ground crew or some other relevant individuals
5 the legal authority to detain passengers on an aircraft for an
6 extended period of time, Defendant has not yet brought them to the
7 Court's attention. Nor is it clear that the passengers were
8 detained for the reasons contemplated by the regulations Defendant
9 cites.

10 As noted above, another element of a false imprisonment claim
11 is that an individual's confinement must be "nonconsensual."
12 Airline passengers initially consent to remaining on an aircraft
13 for an extended period of time when they buy a ticket and board the
14 aircraft. Passengers wishing to withdraw this consent must clearly
15 express this desire to the flight crew. See Schroeder v. Lufthansa
16 German Airlines, 875 F.2d 613, 621-22 (7th Cir. 1989). The Court
17 previously determined that Kathleen Hanni's allegations in the
18 original complaint established that she had explicitly withdrawn
19 her consent, satisfying this element of the cause of action.
20 Kathleen Hanni alleged that she "expressed" to the flight crew her
21 desire to exit the aircraft. Plaintiffs include the identical
22 allegation in the proposed fourth amended complaint. However,
23 because this allegation concerned Kathleen Hanni, who is no longer
24 a plaintiff in the case, it does not satisfy the consent element of
25 a false imprisonment claim with respect to the current Plaintiffs
26 in the case, Timothy Hanni and Chase Costello. Plaintiffs have not
27 specifically alleged that they directly notified the flight crew
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1 that they withdrew their consent to be on the aircraft. Therefore,
2 Plaintiffs have not plead facts that could prove the
3 "nonconsensual" element of their false imprisonment claim.

4 Plaintiffs will be given one further opportunity to amend
5 their complaint if they can truthfully allege that they each
6 personally notified the flight crew that they wished to be
7 deplaned.

8 III. Motion for Class Certification

9 Plaintiffs propose a nationwide class of all passengers, or in
10 the alternative, a class of California residents, who traveled on
11 American Airlines flights scheduled to land or take off from
12 Dallas-Fort Worth International Airport on December 29, 2006, and
13 were confined on the ground in an American Airlines' aircraft for
14 three or more hours.

15 Plaintiffs assert that this action falls under the ambit of
16 Rule 23(b)(3) because common issues will predominate over any
17 individualized issues and because a class action is the superior
18 method of adjudicating this matter. "The Rule 23(b)(3)
19 predominance inquiry tests whether proposed classes are
20 sufficiently cohesive to warrant adjudication by representation."
21 Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). "When
22 common questions present a significant aspect of the case and they
23 can be resolved for all members of the class in a single
24 adjudication, there is clear justification for handling the dispute
25 on a representative rather than an individual basis." Hanlon v.
26 Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998) (internal
27 quotation marks omitted).

1 To determine whether the predominance requirement is
2 satisfied, "courts must identify the issues involved in the case
3 and determine which are subject to 'generalized proof,' and which
4 must be the subject of individualized proof." In re Dynamic Random
5 Access Memory (DRAM) Antitrust Litig., 2006 WL 1530166, at *6 (N.D.
6 Cal.).

7 As noted in the Court's January 15, 2010 Order, which denied
8 class certification of Plaintiffs' negligence, breach of contract
9 and conversion claims, there are individualized issues about what
10 happened on December 29th from airport to airport, from aircraft to
11 aircraft, and from person to person. Some aircraft were permitted
12 to dock during their delay whereas others waited on the tarmac.
13 Some passengers on aircraft on the tarmac were removed from the
14 aircraft and transported by bus to the terminal whereas others
15 stayed on the aircraft during the entirety of the delay.

16 In addition, to prevail on a false imprisonment claim, class
17 members will have the establish that, after they willingly boarded
18 an aircraft, they withdrew their consent and made that withdrawal
19 known to Defendant. Plaintiffs cite no authority for their claim
20 that the Court may "presume" a lack of consent for each class
21 member based on the length of the flight delay. Reply at 13. The
22 issue of consent is individual. This aspect of a false
23 imprisonment claim precludes a finding that common issues
24 predominate.

25 Rule 23(b)(3) also requires that class resolution must be
26 "superior to other available methods for the fair and efficient
27 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "The

1 policy at the very core of the class action mechanism is to
2 overcome the problem that small recoveries do not provide the
3 incentive for any individual to bring a solo action prosecuting his
4 or her rights." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 617
5 (1997). However, if "each class member has to litigate numerous
6 and substantial separate issues to establish his or her right to
7 recover individually, a class action is not 'superior.'" Zinser v.
8 Accufix Research Institute, Inc., 253 F.3d 1180, 1192 (2001). The
9 complexities of this class action weigh heavily against class
10 certification. The evidence suggests that there are too many
11 individual issues for the Court to manage for class adjudication to
12 be deemed superior.

13 CONCLUSION

14 For the foregoing reasons, the Court (1) grants Plaintiffs'
15 motions for reconsideration, (2) denies Plaintiffs' motion to file
16 their proposed fourth amended complaint and (3) denies Plaintiffs'
17 motion for class certification. Docket No. 369. The Court also
18 denies Defendant's administrative motion to file a supplemental
19 memorandum. Docket No. 383. Plaintiffs may file a new proposed
20 fourth amended complaint within one week from the date of this
21 order. Defendant may file a motion to dismiss, not to exceed seven
22 pages, one week thereafter; Plaintiffs' opposition, not to exceed
23 five pages, shall be due one week later and Defendant's reply, not
24 to exceed four pages, shall be due one week thereafter. The matter
25 will be taken under submission and decided on the papers. The
26 Court vacates the case management conference scheduled for April
27 20, 2010 and reschedules a further case management conference for

1 June 29, 2010 at 2:00 p.m.

2 IT IS SO ORDERED.

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4 Dated: 04/19/10

Claudia Wilken

CLAUDIA WILKEN
United States District Judge

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